

# 2009 BCSECCOM 732

## Settlement Agreement

Cem Ali

*Securities Act, RSBC 1996, c. 418*

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and Cem Ali (Ali) agree as follows:

### **Agreed Statement of Facts**

1. Ali is a resident of British Columbia. He is 33 years old.
2. HFX Management Services Inc. (HFX Management) was incorporated in British Columbia on August 10, 2006.
3. Horizon FX Investments Limited Partnership (Horizon LP) was formed on September 11, 2006 by HFX Management. HFX Management provided management services to Horizon LP.
4. Horizon FX Investments Incorporated (Horizon GP) was incorporated in British Columbia on September 11, 2006, and became the general partner of Horizon LP on that date.
5. Ali was the President and sole director of Horizon GP and HFX Management from September 11, 2006 to September 1, 2009.
6. Between August 29, 2006 and January 2008, Ali raised approximately US \$34 million from 957 investors (Investor Funds) through the sale of Horizon LP partnership units (Horizon LP Securities), purportedly for the purpose of investing on the Spot Foreign Exchange or Forex market.
7. Investor Funds were sent to a US company, Razor FX, Inc. (Razor) who purported to trade Forex contracts on behalf of Horizon LP.
8. In January 2008 US Authorities discovered that Razor was fraudulent and conducted no trading. Their assets have been seized by US authorities.
9. Ali was not registered to trade securities under the Securities Act, RSBC 1996, c. 418 (the Act) and never filed a prospectus on behalf of Horizon LP to distribute its securities.
10. Ali sold the Horizon LP Securities relying on an offering memorandum dated September 11, 2006 (the OM)

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11. Ali created or supervised the creation of the OM and a website and brochure that promoted the sale of Horizon LP Securities (collectively, the Horizon Material).
12. The Horizon Material contained various misrepresentations that Ali assessed, evaluated and carefully selected Razor as the Forex trader.
13. On October 18, 2007, the Executive Director ordered under section 164(1) of the Act that all persons cease trading in the securities of Horizon LP (the Cease Trade Order).
14. After the Cease Trade Order of October 18, 2007, Ali received approximately \$2.5 million of Investor Funds.

### ***Misconduct***

15. By relying on an OM that contained misrepresentations, Ali illegally traded and distributed approximately US \$34 million of Horizon LP securities contrary to section 34(1)(a) and 61(1) of the Act.
16. By making untrue, false or misleading statements in the Horizon Material, Ali made misrepresentations contrary to section 50(1)(d) of the Act.
17. By continuing to receive Investor Funds and sell Horizon LP Securities after October 18, 2007, Ali contravened the Cease Trade Order.
18. Ali acted contrary to the public interest by engaging in the conduct described in this Statement of Facts.

### ***Return of money to Investors***

19. On September 1, 2009, HFX Management, Horizon LP, Horizon GP and Ali became bankrupt and the court appointed a trustee in bankruptcy.
20. Between January 22, 2008 and March 7, 2008, the BCSC froze all known bank accounts and property held by the Ali and his related companies. The accounts and property are valued at approximately \$2.6 million.
21. The BCSC will be releasing the frozen accounts and property to the trustee in bankruptcy.

### ***Mitigating Factors***

22. Ali, through US legal counsel, filed a claim for money by Horizon LP from the Razor assets seized by the US Authorities. Any returned money will be

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distributed back to Investors through the bankruptcy trustee in British Columbia.

### **Settlement Payment**

23. If Ali were not bankrupt, a monetary penalty of \$1 million would have been assessed in the public interest for Ali's conduct described in this Settlement Agreement. In settlement of this matter, Ali undertakes that if any monies are recovered on behalf of Ali or the Horizon entities, all such monies shall be used towards reimbursing investors. If the investors have been fully reimbursed, Ali undertakes that he will direct the trustee to pay any surplus to the BCSC and no money shall be paid to Ali.
24. Ali acknowledges his duties under the Bankruptcy and Insolvency Act (the BIA), and under the BIA Ali undertakes to provide all reasonable assistance to the Trustee in relation to the Trustee's efforts to recover property and funds for the benefit of investors.

### **Order**

- ¶ 2 The Executive Director will issue an order that (the Order):
- (a) under section 161(1)(b) of the Act, Ali will cease trading in and be prohibited from purchasing any securities, except that he may trade and purchase securities through one account in his own name through a registered representative if he provides a copy of this Order to the registered representative before trading;
  - (b) under section 161(1)(d)(i) and (ii) of the Act, Ali be prohibited from becoming or acting as a director or officer of any issuer;
  - (c) under section 161(1)(d)(iii) of the Act, Ali be prohibited from becoming or acting as a registrant, investment fund manager or promoter;
  - (d) under section 161(1)(d)(iv) of the Act, Ali be prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
  - (e) under section 161(1)(d)(v) of the Act, Ali be prohibited from engaging in investor relations activities.

The prohibitions against Ali are permanent from the date of the Order.

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### **Consent to Reciprocal Orders**

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making a similar Order.

### **Waiver**

- ¶ 4 Ali waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

### **Counterpart**

- ¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

- ¶ 6 December 14, 2009

“C. Ali”

- ¶ 7 Cem Ali

“Karen Chernoff” )  
Witness Signature )  
Karen Chernoff )  
Witness Name (please print) )  
701 West Georgia Street )  
Vancouver, BC V7Y 1L2 )  
Address )  
Investigator, BCSC )  
Occupation )

- ¶ 8 December 14, 2009

“M. Eady”

- ¶ 9 Martin D. Eady  
Acting Executive Director